IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8-1-2007

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THE HONOURABLE MR.JUSTICE P.K.MISRA

and

THE HONOURABLE MR.JUSTICE K.MOHAN RAM

Habeas Corpus Petition No.1038 of 2006

Krishnaveni .. Petitioner

..vs..

1.The State of Tamil Nadu
Rep. by its Secretary to Government
Department of Prohibition and Excise
Fort St. George,Chennai 9

2.The District Magistrate and
the District Collector
Namakkal District,Namakkal .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Habeas Corpus by directing the respondents to produce the body of the husband of the petitioner by name Sivakumar before this Honourable Court and set him at liberty forthwith by calling for the records pertaining to the detention order dated 29.06.2006 made in C.M.P.No.10/Goonda/2006 (M-1) on the file of the 2nd respondent, quash the same.

For petitioner : Mr.N.Manokaran

For respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor

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ORDER

(Order of the Court was made by P.K.MISRA,J.)

Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents.

2. The order of detention on the allegation that the detenu is a `Goonda' is in question.

3. The order of detention is based on three adverse cases and one ground case. The third adverse case which is material for our purpose is Komarapalayam P.S.Cr.No.242/2006 dated 28.5.2006 under sections 294(b), 307, 341 and 384 I.P.C. The ground case is Komarapalayam P.S.Cr.No.243/2006 under section 392 I.P.C. It is not in dispute that the detenu was in custody in connection with Cr.No.242/2006 as well as Cr.No.243/2006. In the above background relevant portion of paragraph 5 of the grounds of detention is extracted hereunder:

> "5. I am aware that Thiru.Sivakumar is in remand from 29.05.2006 and is lodged at the Central Prison, Salem and his remand extended upto 10.07.2006 for the offences Cr.No.243/2006 of Komarapalayam P.S. u/s 392 IPC and has moved bail application before the Judicial Magistrate, Tiruchengode in Kumarapalayam P.S.Cr.No.242/2006 and Cr.No.243/2006 vide CMP No.3848/2006, dated 06.06.2006 and the same was dismissed on 06.06.2006. Tr.Sivakumar moved for second bail before the Principal District Sessions Judge Court, Namakkal in Kumarapalayam P.S.Cr.No.242/2006 on 9.6.2006 in Crl.M.P.No.646/2006 which was also dismissed on 9.6.2006. I am also aware that a bail application was moved before the High Court in O.P.No.15415/2006 and is pending. However, there is most likely possibility of his coming out on bail for the above case, since in similar cases bails are granted by the High Court after lapse of time. if he comes out on bail, he will indulge in future activities, which will be prejudicial to the maintenance of public order."

The learned counsel for the petitioner submits that this paragraph 5 which records the possibility of the detenu being released on bail clearly indicates the non-application of mind on the part of the detaining authority. It has been submitted that the satisfaction recorded in paragraph 5 is based on incorrect facts.

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It is submitted by him in paragraph 5 the detaining authority has referred to the bail application before the Judicial Magistrate, Tiruchengode in Kumarapalayam P.S.Cr.No.242/2006 and Cr.No.243/2006 vide C.M.P.No.3848/2006 dated 6.6.2006. It is submitted by him that actually such bail application was only relating to Cr.No.243/2006 and not Cr.No.242/2006. More over, such bail application had been filed on 2.6.2006 and not on 6.6.2006. Assuming that by typographical error wrong date is indicated regarding the filing of the bail application, it is important to note that the application was in connection with Cr.No.243/2006 and not a joint bail application in respect of Cr.No.242/2006 and Cr.No.243/2006. This vital aspect has not been noticed by the detaining authority.

4. More over, the detaining authority has also referred to the rejection of the bail application by the Principal District Sessions Judge, Namakkal, in Crl.M.P.No.646/2006 in connection with Kumarapalayam P.S. Cr.No.242/2006. The detaining authority has referred to the fact that bail application was filed before the High Court in O.P.No.15415/2006 which was against the order of the Principal District Sessions Judge, in Crl.M.P.No.646/2006. In other words, the bail application which was filed before the High Court was in connection with Cr.No.242/2006, the last adverse case. After recording as above, the detaining authority has further observed,

> "However, there is most likely possibility of his coming out on bail for the above case, (emphasis is added), since in similar cases bails are granted by the High Court after lapse of time."

It is thus obvious that the detaining authority has taken note of the fact that bail application has been filed before the High Court relating to adverse case and the possibility of the detenu coming out of bail in the adverse case. However, there is no satisfaction recorded by the detaining authority relating to the possibility of the detenu coming out of bail in the ground case. It may be that the detaining authority assumed that the bail application filed before the High Court is in connection with both cases which is factually incorrect. This aspect clearly indicates non-application of mind on the part of the detaining authority. In such view of the matter we are constrained to quash the order of detention.

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5. The Habeas Corpus Petition is accordingly allowed. The impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to Government
Department of Prohibition and Excise
Fort St. George,Chennai 9

2.The District Magistrate and
the District Collector
Namakkal District
Namakkal

3. The Superintendent,
Central Prison, Salem.

4. The Joint Secretary to Government,
Public (Law and order) Department,
Fort St. George, Chennai-9.

5. The Public Prosecutor,
High Court, Madras

1 cc to Mr.N. Manokaran, Advocate, Sr. 1589

H.C.P.No.1038/2006

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